

UNITED STATES OF AMERICA 101 FERC ¶ 61,034
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, Linda Breathitt,
and Nora Mead Brownell.

Avista Corporation,
Bonneville Power Administration,
Idaho Power Company,
Montana Power Company,
Nevada Power Company,
PacifiCorp,
Portland General Electric Company,
Puget Sound Energy, Inc.,
Sierra Pacific Power Company,
British Columbia Hydro and Power Authority

Docket No. RT01-35-008

ORDER GRANTING CLARIFICATION OF PRIOR ORDER

(Issued October 10, 2002)

1. In this order, we grant Avista Corporation, et al.'s (Applicants) request for clarification that it is not required to make a compliance filing in response to the Commission's order issued on September 18, 2002, in this proceeding.¹
2. The September 18 Order addressed Applicants' Stage 2 Filing concerning their proposal to form RTO West. Among other things, the September 18 Order directed that Applicants, within 120 days, submit a compliance filing that includes a proposed RTO West Tariff, a detailed ancillary services proposal and a list of their transmission facilities together with the proposed disposition of each facility and the reason for such disposition.
3. On September 27, 2002, Applicants filed a request for expedited procedural clarification of the September 18 Order. They contend that, as a procedural matter, it is premature to order a compliance filing in this proceeding because (1) this proceeding concerns their petition for a declaratory order concerning their RTO proposal and (2) they have not yet made any filings pursuant to section 203 or

¹Avista Corp., et al., 100 FERC ¶ 61,274 (2002) (September 18 Order). Applicants consist of Avista Corporation, Bonneville Power Administration, Idaho Power Company, Montana Power Company, Nevada Power Company, PacifiCorp, Portland General Electric Company, Puget Sound Energy, Inc., Sierra Pacific Power Company, and British Columbia Hydro and Power Authority.

section 205 of the Federal Power Act.² They state that the Commission has previously determined that it is premature to order them to submit a compliance filing in a declaratory order proceeding.³

4. Applicants further state that the September 18 Order provided significant guidance as to the manner in which the RTO West proposal could be modified or supplemented to fully comply with Order No. 2000.⁴ They state that, if they disagree with a Commission finding or rationale in the September 18 Order, they may revise their proposal or provide further information or justification for a particular aspect of the proposal in subsequent filings with the Commission. They state that such an approach is appropriate given the procedural status of the proceeding. They add that they will work diligently over the next several months to further develop the RTO West proposal.⁵

5. On October 4, 2002, Utah Associated Municipal Power Systems (UAMPS) filed a response in opposition to Applicants' request for clarification. UAMPS contend that the Commission routinely orders compliance filings when ruling upon requests for declaratory orders. Further, they express concern that Applicants' pleading suggests that Applicants may not abide by the guidance provided by the September 18 Order, arguing that Applicants interpret the September 18 Order as providing "mere" guidance and lacking any real binding force. UAMPS request that, even if the Commission decides that a requirement of a formal compliance filing is unnecessary at this time, the Commission clarify that the September 18 Order is a final order with respect to the issues it decided and with respect to the further information that it required, and that Applicants or any other party wishing to seek rehearing of those issues must do so in a request for rehearing filed within 30 days of the September 18 Order, not in some unspecified future filing.

6. In response to UAMPS concerns, we note that to the extent that the September 18 Order approved the proposal, such approval is conditional. The September 18 Order determined that the RTO West proposal will satisfy the requirements of Order No. 2000 "with some modification and further development of certain details."⁶ In view of the fact that the September 18 Order concerned

²16 U.S.C. §§ 824b, 824d (2002).

³See Avista Corp., et al., 96 FERC ¶ 61,265 at 62,018 (2001) (September 2001 Clarification Order).

⁴See Regional Transmission Organizations, Order No. 2000, 65 Fed. Reg. 809 (Jan. 6, 2000), FERC Stats. & Regs. ¶ 31,089 (1999), order on reh'g, Order No. 2000-A, 65 Fed. Reg. 12,088 (Mar. 8, 2000), FERC Stats. & Regs. ¶ 30,092 (2000), aff'd sub nom., Public Utility District. No. 1 of Snohomish County, Washington v. FERC, 272 F.3d 607 (D.C. Cir. 2001).

⁵Applicants' Request for Clarification, p. 5.

⁶100 FERC, at P 2. See also 100 FERC, at P 4 and Ordering Paragraph (A). If the extent
(continued...)

Applicants' petition for a declaratory order concerning their Stage 2 Filing, we agree that it was premature to require the compliance filing ordered in the September 18 Order.⁷ Accordingly, we will grant Applicants' request for clarification that they are not required to submit the compliance filing discussed above in response to the September 18 Order.

7. The September 18 Order also directed Applicants to, within 90 days: (1) codify their Memorandum of Understanding and Cooperation (MOU) between the parties to expressly define their commitments and the forum in which issues will be resolved; and (2) provide the Commission a list of pending issues before the Steering Group and timeline for resolution of those issues. Since the September 18 Order seeks a report on progress in resolving issues on a West-wide basis, and the Commission has scheduled an order addressing the proposal for the WestConnect RTO,⁸ and in order to allow time for the parties to include WestConnect in the resolution of West-wide issues, Applicants should codify the MOU and provide a report on the progress of the Steering Group within 90 days of the issuance of a Commission order addressing the WestConnect application. At that time all three organizations proposing to form RTOs in the West will have received guidance on their market design proposals.

8. With the issuance of our order concerning the WestConnect RTO proposal, the Commission has provided guidance on the three principal RTO proposals in the Western Interconnection: CAISO, RTO West and WestConnect.⁹ To achieve the efficiencies reflected in those market design proposals, we believe that it is imperative that the proponents of these organizations, Western market participants and other interested parties all work cooperatively to identify common commercial practices among the proposals as well as potential market design elements that could create seams between the organizations. Where potential seams issues are identified, we direct CAISO, RTO West and

⁶(...continued)

that Applicants, or any parties, disagree with findings or rationales in the September 18 Order, they must do so in a request for rehearing of the September 18 Order filed within 30 days of the issuance of the September 18 Order.

⁷See, e.g., September 2001 Clarification Order; Constellation Power Source, Inc. v. California Power Exchange Corp., 100 FERC ¶ 61,380 (2002) (a declaratory order does not require compliance but rather provides Commission guidance on the subject matter of a controversy).

⁸Arizona Public Service Co., et al., Docket Nos. RT02-1-000 and EL02-9-000. WestConnect applicants are Arizona Public Service Company, El Paso Electric Company, Public Service Company of New Mexico and Tucson Electric Power Company.

⁹See California Independent System Operation Corporation, 100 FERC ¶ 61,060, Avista Corporation, et al., 100 FERC ¶ 61,274 and Arizona Public Service Company, et al., 101 FERC ¶ 61____ (2002).

WestConnect, and strongly encourage market participants and other interested parties, to collaborate through the Seams Steering Group - Western Interconnection (Steering Group) on solutions to such issues, thus ensuring that markets in the West can achieve their fullest potential benefit.

The Commission orders:

Applicants' request for clarification of the September 18 Order is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.